

Message Text

UNCLASSIFIED

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73

ACTION EA-14

INFO OCT-01 ISO-00 PM-07 L-03 INR-11 PRS-01 SSO-00 INRE-00

/037 W

----- 112690

O 260245Z JUL 74

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC IMMEDIATE 3519

UNCLAS TOKYO 9720

E.O. 11652: N/A

SUBJECT: FCJ CASES, SGTS. CARROLL E. LOCKE AND HAROLD W. JOHNSON

ATTN EA/J

FOLLOWING SENT ACTION TOKYO FROM 5AF FUCHU AS JAPAN/JA
O 250120Z JUL ACTION 5AF FUCHU AS JAPAN/JA/CC INFO CINCPACAF
HICKAM AFB HAWAII/JA 313AD KADENA AB OKINAWA//JA COMUSJAPAN FUCHU
AS JA/JA CINCPAC HONOLULU HAWAII/JA FM CSAF WASHDC/AFJA
P 241928Z JUL REPEATED FOR INFO

QUOTE

SUBJECT: FCJ CASES, SGTS CARROLL E. LOCKE AND HAROLD W. JOHNSON.

REFERENCES: (A) 313AD/JAI 120740Z JUL 74; (B) CSAF/JACI
191845Z JUL 74; (C) 313AD/JAI 190741Z JUL 74; (D) 5AF/JA
220500Z JUL 74.

1. REFERENCE (A) WAS INITIAL INCIDENT REPORT THIS CASE.
REFERENCE (B) WAS REQUEST FOR DUTY DETERMINATION AND SUPPORTING
RATIONALE PRIOR TO COMMUNICATION TO JAPANESE AUTHORITIES.
REFERENCE (C) REPORTED THAT COMMANDERS 5AF AND 313AD HAD
DETERMINED THAT OFFICIAL DUTY CERTIFICATE SHOULD NOT BE ISSUED.
REFERENCE (D) RESPONDED TO REFERENCE (B). BASED ON FACTS
SUPPLIED IN REFERENCES (A) AND (D). IT IS THE DETERMINATION OF

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THIS HEADQUARTERS THAT ANY CRIMINAL OFFENSES THAT MIGHT BE

INVOLVED ARE 'OFFENSES ARISING OUT OF ANY ACT OR OMISSION DONE IN THE PERFORMANCE OF OFFICIAL DUTY. '(PARA 3(A)(II), ARTICLE XVII, JAPANESE SOFA). RATIONALE FOR THE ABOVE IS AS FOLLOWS:
2. THE OFFENSE (POSSIBLE ASSAULT) AROSE OUT ON AN ACT (PROTECTION OF A FIRING RANGE AND U.S. PROPERTY THEREON) WHICH WAS OFFICIAL AIR FORCE DUTY. PROTECTION OF THE RANGE AND PROPERTY THEREON INVOLVED THE AUTHORITY TO REPEL TRESPASSERS DURING THE TIME IN QUESTION AND, IF NECESSARY, TO APPREHEND THEM AND TURN THEM OVER TO OKINAWAN RANGE GUARD. REFERENCE (D) STATES THAT 'SIGNS IN JAPANESE AND ENGLISH WARNING PEOPLE TO STAY OFF WERE STILL POSTED' AND 'THERE IS NO DOUBT THAT THE JAPANESE WERE TRESPASSERS AND THEIR SOLE REASON FOR BEING IN THE PIT WAS TO STEAL THE EXPENDED BRASS.' WITH A DUTY TO PROTECT THE RANGE AND, IF NECESSARY, REPEL TRESPASSERS. THE USE OF SOME DEGREE OF FORCE (LAYING ON HANDS TO ESCORT THEM OFF, OR POINTING A WEAPON OR OTHER SUCH PROCEDURES) WOULD, AS A MINIMUM, BE EXPECTED TO ACCOMPLISH THIS OBJECTIVE. THE FIRING OF A FLARE GUN (WHICH CAUSED THE INJURY) RAISES ONLY THE QUESTION OF WHETHER EXCESSIVE FORCE WAS USED. IF AIR FORCE GUARDS DO IN FACT USE EXCESSIVE

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FORCE IN CARRYING OUT THEIR DUTIES IN THE PROTECTION OF PROPERTY AND PERSONNEL, AIR FORCE DISCIPLINARY CHANNELS ARE AVAILABLE TO DETERMINE WHETHER THE USE OF FORCE WAS EXCESSIVE AND WHETHER AND TO WHAT EXTENT THE INDIVIDUAL SHOULD BE DISCIPLINED. INDEED, IT WAS FOR THIS REASON THAT THE STATUS OF FORCES AGREEMENT PROVIDES THAT THE U.S. HAS PRIMARY JURISDICTION OVER OFFENSES ARISING OUT OF ACTS OR OMISSIONS DONE IN THE PERFORMANCE OF OFFICIAL DUTY. THE DISCIPLINARY INTERESTS OF U.S. FORCES IN CASES INVOLVING THE PERFORMANCE OF OFFICIAL DUTY ARE PARAMOUNT TO THE INTERESTS OF THE HOST NATION. AS A MATTER OF LAW, THE ONLY SITUATION THAT WOULD REMOVE LOCKE AND JOHNSON FROM 'OFFICIAL DUTY' STATUS WOULD BE THE COMMISSION OF AN ACT FOREIGN AND UNRELATED TO THEIR DUTY OF GUARDING THE RANGE. EXCESSIVE USE OF FORCE, OR OTHERWISE EXCEEDING THEIR AUTHORITY IN THE PROTECTION OF THE RANGE, IS NOT SUFFICIENT TO REMOVE THE CASE FROM THE OFFICIAL DUTY CATEGORY. RELYING ON FOREGOING AND ACTION IN SIMILAR CASES IN OTHER COUNTRIES (SEE AF/JAG LAW REVIEW, VOLUME XVII, NO. 4, PAGES 284-289).
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THIS INCIDENT IS TO BE CONSIDERED AS HAVING OCCURRED IN THE PERFORMANCE OF OFFICIAL DUTY. ACCORDINGLY, A DUTY CERTIFICATE SHOULD BE ISSUED IN ACCORDANCE WITH PROCEDURES IN JAPANESE SOFA

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AND AGREED PROCEDURES DEVELOPED WITHIN THE U.S.-JAPAN JOINT

COMMITTEE.

3. SAF/IA CONCURS.

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NNN

Message Attributes

Automatic Decaptioning: X
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Control Number: n/a
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Draft Date: 26 JUL 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
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Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
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From: TOKYO
Handling Restrictions: n/a
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ISecure: 1
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